

passage at a convenient hour for that purpose. If so, they may now use it for giving access to the servants of the Municipality at reasonable and convenient times. And in a legal sense they are not aggravating the servitude at all, for this is the servitude to be inferred from the proved facts.

The result is that, in their Lordships' opinion, the decree appealed from is right, and this appeal should be dismissed. They will humbly advise Her Majesty to that effect. The appellant must pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. Sanderson & Holland.

Solicitors for the respondents: Messrs. Wrentmore & Swinhoe.

C. B.

1886

JADULAL
MULLICK
v.
GOPAL-
CHANDRA
MUKERJI.

CIVIL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Norris.

SHERE ALI AND ANOTHER (PLAINTIFFS) v. C. L. PRENDERGAST
AND ANOTHER (DEFENDANTS.) *

1886
March 5.

Army Act (44 and 45 Vict., c. 58), s. 148—Courts of Requests, their jurisdiction—Court of Small Causes, Power of—Construction of s. 151, cl. 1, of the Army Act.

The Army Act (44 and 45 Vict., c. 58) gives jurisdiction to a Court of Small Causes in all actions of debt and personal actions against persons subject to military law (other than soldiers in the regular forces) over which such Court would ordinarily exercise jurisdiction, and provides a Court of Requests (s. 148) for those cases only where an action of the value of Rs. 400 or under has to be brought against such persons at a place lying beyond the jurisdiction of any Small Cause Court.

Held, also, that the words "within the jurisdiction" in s. 151, cl. 1, referred to "actions" and not to "persons."

THIS was a reference from the Court of Small Causes at Patna under s. 617 of the Civil Procedure Code. Sheik Shere Ali and another brought a suit in the Court of Small Causes at Patna against Major C. L. Prendergast, Deputy Judge Advocate General, residing in Rawalpindi, and Shiva Gobind living at Dinapur, within

* Civil Reference No. IA of 1886, made by Baboo Troilokya Nath Mitter, Judge of the Small Cause Court, Patna, dated the 15th December 1885.

1886 the local limits of the Patna Small Cause Court, for recovery of the value of goods sold and delivered at Dinapur, and on August 13th, 1883, obtained an *ex parte* decree. In execution of the decree, an order having been issued on the Military Paymaster of the Punjab Circle for the attachement of Major Prendergast's salary, an objection was taken to the effect that the proper Court which could take cognizance of the case was a Court of Requests composed of officers under s. 148 of the Army Act (44 and 45 Vict., c. 58) and not the Patna Court of Small Causes.

SHEER ALI
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GAST.

The Judge was of opinion that, in s. 151, cl. 1, "in India all actions of debt and personal actions against persons subject to military law other than soldiers of the regular forces, within the jurisdiction of any Court of Small Causes shall be cognizable by such Court to the extent of its powers," the words "within the jurisdiction" referred to "actions" and not to "persons," and that, under the section, actions of debt and personal actions against military men over which any Small Cause Court would ordinarily exercise jurisdiction should be cognizable by such Court to the extent of its power; and when such an action of the value of Rs. 400 and under had to be brought against a military man (other than soldiers of the regular forces) at a place lying beyond the jurisdiction of any Small Cause Court, then and then only it should be triable by a Court of Requests."

The following question was referred to the High Court: Whether, under the circumstances, the Patna Court had jurisdiction to try the suit.

The opinion of the Court (MITTER and NORRIS, JJ.) was as follows:—

We are of opinion that the view taken by the Judge of the Small Cause Court, Patna, of s. 151 of the Army Act (44 and 45 Vict., c. 58) is correct; and we are of opinion that Major Prendergast's pay may properly be attached in execution of the decree obtained against him.

K. M. C.